IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1448 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YOGESH PITAMBARDAS JOSHI

Versus

NINA Y JOSHI

Appearance:

1. Civil Revision Application No. 1448 of 1995

MR AR MAJMUDAR for Petitioner No. 1

MR SP HASURKAR for Respondents No. 1-3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 26/03/2002

ORAL JUDGEMENT

The petitioner - husband has filed this revision application challenging the order passed by the learned

3rd Extra Assistant Judge, Vadodara dated 3rd May, 1995 passed below application Ex.12 in H.R.P. Suit No. 182 of 1993, wherein, the learned Judge has allowed the application Ex. 12 filed by the respondent - wife under Section 24 of the Hindu Marriage Act and granted interim alimony in favour of wife to the tune of Rs.600/- p.m. and Rs.300/- each for two minor daughters Jalpa and Gargi from the date of application i.e. from 22nd December, 1993 and further ordered that the amount of Rs.400/- be granted in favour of respondent wife under Section 125 of the Criminal Procedure Code is liable to the adjusted and the husband has to pay Rs.2500/- towards costs.

2. As found from the order under challenge, the petitioner has filed proceedings under Section 13 of the Hindu Marriage Act in the trial Court being H.M. Petition No. 182 of 1993 and prayed for divorce and the said Hindu Marriage Petition was pending before the learned trial Judge. In the said proceeding the respondent - wife has filed application Ex.24 of the Hindu Marriage Act praying for interim alimony and costs of the proceedings. It is the case of the respondent wife that petitioner husband is working as Accountant with the Forest Department and by way of salary he is earning to the tune of Rs.3449/- per month. The application for interim alimony was filed by the wife as well as her two minor daughters Jalpa and Garji aged about 8 years and 5 years respectively on the ground that she is required to maintain herself as well as to provide education to her minor children. An affidavit is filed by the respondent wife that her husband is earning Rs. 3449/- by way of salary. In the said proceeding the petitioner husband had filed reply Ex.20 denying the case of the wife and it is his case that he is only earning Rs.900/- p.m. The applicant wife is serving in Vadodara Stock Exchange and she is in a position to maintain herself and her minor children. It is also the case of the husband that the criminal court has while considering the application for maintenance under Section 125 of the Cr.P.C. had awarded a sum of Rs.400/- p.m. to the wife by way of maintenance and further that the husband has also liability to maintain his old parents. The learned trial Judge on granting application Ex. 12 and contention raised before me on the point of income and as observed that the petitioner - husband has failed to produce any documents to show that he is not getting salary to the tune of Rs.34449/- and it is also an admitted fact that the the petitioner husband is serving as an Accountant with Forest Department, the petitioner has not produced any evidence about his income. However, it is the case of the petitioner -husband that he has

liability to pay maintenance as per the order passed by the Criminal Court under Section 125 of the Cr.P.C. and he is paying Rs.400/- p.m. to his wife. No evidence is produced by the husband to say that wife is working and earning and she is in a position to maintain herself as well as her children. The learned Trial Judge has accordingly, fix the interim alimony at Rs.600/- p.m. and granted Rs.300/- to each daughters from the date of application and further ordered that the amount of Rs.400/- be granted in favour of respondent wife under Section 125 of the Criminal Procedure Code is liable to the adjusted and the husband has to pay Rs.2500/- towards costs. On going through the order, I am of the view that no interference is required and this is not a matter wherein this court is required to entertain the revision application while exercising my revisional jurisdiction under Section 115 of the CPC. This court is also of the view that petition for divorce has been filed by the husband against the wife in 1993 and by the time, it is also likely that the trial Court must have also disposed of the H.M. Petition filed in the year 1993. Hence there is no substance in this Revision Application. Revision Application is accordingly rejected. Rule is discharged. Order passed by the learned trial Judge is confirmed with no order as to costs.

(D.K.Trivedi,J.)
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